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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VERONICA HURTADO, Plaintiff and Respondent, v. DARRELL L. STEWART, Defendant and Appellant.	E055654 (Super.Ct.No. RIC1117780) **OPINION**

APPEAL from the Superior Court of Riverside County. Pamela Thatcher, Temporary judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Grobaty & Pitet, Christopher L. Pitet and Jacqueline A. Turner, for Defendant and Appellant.

Michael A. Razo for Plaintiff and Respondent.

After hearing, the trial court granted the request of plaintiff and respondent Veronica Hurtado for an order to stop harassment by defendant and appellant Darrell L. Stewart. Stewart appeals.

I

PROCEDURAL HISTORY

On November 2, 2011, Veronica Hurtado submitted a request for orders to stop harassment by her neighbor, Darrell Stewart. She checked a box on Judicial Council Forms, form CH 100, stating that she was hurt (physically or emotionally) by Stewart. Hurtado stated the most recent harassment was on October 29, 2011, and that "Conversation always turns to violence. Constant harassment fearing it will go to the next level." She alleged that Stewart engaged in a course of conduct that harassed her and caused substantial emotional distress. The form asked for a description of the conduct, and she responded: "Darrell Stewart has taken pictures with a long lens camera towards my house, racial slurs, arguments, yelling face to face to the point of physical altercation." Asked to describe the harassment, she said: "Many false accusations against us. Code enforcement, animal control, department of transportation, I fear for what he will do next." She also asked that Stewart "stop the calling all of these departments" and that he be restrained from racial slurs and from taking pictures of her house.

Stewart responded to the petition with a lengthy written statement discussed, *post*.

After a two-day hearing, the trial court issued a restraining order. Stewart was ordered not to contact or harass Hurtado, her husband, or their four children. Stewart was also ordered to stay 20 feet away from Hurtado and her family.[1]

II

THE HEARING

Code of Civil Procedure Section 527.6 provides for a hearing to be held on a request for injunction.[2] Former subdivision (d), now subdivision (i), states: "At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment."

To determine whether substantial evidence supports the trial court's factual findings, we must examine the testimony and other evidence presented at the hearing in some detail. In doing so, we emphasize that the evidence of the parties is highly polarized. Each party demonizes the other, and the gulf between them is deep and wide. (Cf., *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 193-194.)

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[1] The injunction expired on December 14, 2012, and we have not been notified that it has been renewed or extended. Although it appears that the appeal may be moot, neither party has requested dismissal on that ground. In any event, we follow the guidance in *Nebel v. Sulak* (1999) 73 Cal.App.4th 1363 (Fourth Dist., Div. Two). In that case, which arose under the same code section, this court reached the merits because it found the issues are of general interest and likely to recur. (*Id.* at p. 1367.) We make the same finding here.

[2] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

Plaintiff Hurtado testified first. In reviewing her testimony, it is important to realize that her petition against Stewart was joined with a petition against his wife, Rochelle Stewart (Rochelle). Most of Hurtado's testimony was directed toward Rochelle, but the trial court did not issue an injunction against Rochelle. We, of course, focus on the evidence against Stewart.

The hearing commenced on November 22, 2011. Hurtado told the court that both Stewarts made multiple racial slurs against her and her husband over a 10-year period. Next, she testified that Stewart took pictures of her home and of neighbors' homes, including pictures of a neighbor's backyard.

Hurtado testified that the Stewarts have called code enforcement 15 to 20 times to report alleged code violations on the Hurtado property. They also called the police four to five times a year or whenever the Hurtado/Ramirez family has a party. The parties usually turn into a shouting match with the Stewarts.

Hurtado stated that her husband built a block wall with a fence on top to prevent Stewart from looking into their backyard. She does not let her four children play in the front yard.

Hurtado made a number of statements about the Stewarts'conduct toward other neighbors, and she submitted a number of letters from the neighbors. Relevancy and hearsay objections were sustained, but several of the neighbors testified.

Hurtado's husband, Robert Ramirez, then testified that he saw Stewart measure the block wall he was building. According to Ramirez, Stewart called the city code enforcement department on "everything that I did, whether it was me putting a roof on

my house [or] whether it was me fixing my horse stalls." One time, Stewart called code enforcement and complained that Ramirez had too many roosters, and he was accused of holding "illegal gang cockfights." Ramirez testified that he never owned roosters, although he recently acquired a few chickens.

Ramirez testified that Stewart had ruined every family gathering held at his home by coming to the home to rudely complain or by calling police about noise, including loud music. On October 29, 2011, Stewart called police three times about noise, and Ramirez was given a $1,800 citation.

Ramirez also testified that Stewart took a picture of his children. However, on cross-examination he confirmed that this only occurred one time.

Finally, Ramirez testified that other neighbors had problems with Stewart.

A neighbor, Alejandro De La Riva, testified, over objection, that Stewart had placed a ladder in his yard and taken pictures of De La Riva's daughters in the swimming pool. He also testified that Stewart made comments to his girls and that they were afraid of him. Although the court sustained an objection to some of this testimony, it did allow the witness to testify about racial slurs made by Stewart. De La Riva then testified that Stewart said "bad words," called them Mexicans, and told them to go back where they came from.

De La Riva also testified that Stewart had called police when De La Riva had a party and that Stewart had also called code enforcement. As a result, he had received three tickets over the last year. Police had been called seven times in the last year.[3]

De La Riva's daughter Yvette, age 16, testified that she and her brother were afraid of a man, and she changed school bus stops as a result. She also testified that she did not have pool parties because "our neighbor to our right" complained about the noise. She did not name Stewart as the neighbor.

Jose Campos, another neighbor, testified that, when he was moving into his home, Stewart came over and took pictures of his house, his cars, and the possessions he was unloading from a truck. Code enforcement came out twice in the last year, although Campos did not testify that it was Stewart who had called them.

Campos also testified that his granddaughter told him that a man was taking pictures of her and her sister, ages 13 and 11. Campos did not testify that the man was Stewart.

Joaquin Juan Cruz, another neighbor, testified that police were called when the children played basketball in a neighbor's yard and when they played in the swimming pool. The police were also called when the roosters crowed in the yard. But Cruz testified that he did not know who called the police.

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[3] Written statements of De La Riva and Jose Campos are included in respondent's appendix filed August 6, 2012.

At that point, the Stewarts' counsel offered a written statement from the Stewarts. The hearing was continued to allow time for Hurtado to cross-examine the Stewarts on their statement.

The hearing resumed on December 14, 2011. The statement was marked as defense exhibit A for identification. Assuming it is the statement in our record, we will briefly summarize it.[4]

The statement first claims that the petition was filed as a retaliatory measure because the Stewarts had called the police to complain of a noise violation on October 29, 2011, and a citation was issued to Hurtado and Ramirez.[5] After the Stewarts made several complaints to Hurtado and Ramirez about noisy parties, a sheriff's deputy told the Stewarts not to contact the neighbors, but to call the sheriff's office instead.

There was another confrontation when Stewart contacted the Riverside County Department of Transportation about building a block wall that would encroach on the right-of-way along the side of his property in the same manner in which Ramirez's block wall allegedly encroached on his right-of-way. The County then investigated Ramirez's wall, and Ramirez was upset about that.

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[4] The statement appears to be exhibit 3 in the appellant's appendix, although it is not identified as such. Some exhibits, including statements of the neighbors, were held inadmissible. Other exhibits were admitted, but the only statements in our record are from Campos and De La Riva.

[5] The request for restraining order was filed four days later, on November 2, 2011.

The Stewarts' statement said that Ramirez blamed Stewart for calling animal control about mistreatment of his horses. According to Stewart, he was not the person who called about the horses. Stewart admitted he called animal control about another neighbor's roosters and game cocks, and Ramirez became upset even though he was not involved in the issue.

The Stewarts' statement also describes alleged deterioration of the neighborhood due to parties, game cocks, trucks parked illegally on the streets, and gangs moving into the neighborhood. It also alleges threats and retaliation by various persons against the Stewarts.

Finally, the statement denies that the Stewarts made any racial slurs or remarks. It also denies that Stewart ever took pictures of any children, and it alleges the only pictures were of code violations.

Rochelle then testified that the statement was true and correct. She denied making any threats against Hurtado and her family, and she denied having ever used derogatory language against them. There was a noisy party on October 29, 2011, but she denied talking to Hurtado on that date. She also denied seeing her husband talk to Hurtado or Ramirez on that date.

Rochelle also testified that she had never seen Stewart take pictures of any children in the neighborhood. The only pictures taken were of code violations and a beautiful sunset. Although the Stewarts had reported code violations in the past, they had not done so in the preceding year. They had called police two or three times for noise

violations in the preceding year. One was for De La Riva's residence, and two were for the Hurtado/Ramirez residence.

Rochelle denied that Stewart took pictures of the neighbor's children in their swimming pool. Referring to the Campos testimony, she testified that the pictures were taken by a code enforcement officer from the Stewarts' property. She also denied making complaints about truck and car parking. She testified that they had only made noise complaints and had not called code enforcement about any animals.

Stewart also affirmed the written statement. He denied threatening violence or making any racial slurs. He denied talking to Hurtado or Ramirez at all on October 29, 2011. He denied taking photographs of children in the neighborhood. He did identify a photograph he had sent to the transportation department concerning Ramirez's block wall.

Stewart acknowledged reporting code violations when he believed that there was an existing violation. He stated he was only trying to get his neighbors to comply with existing ordinances. Stewart also denied taking pictures of Hurtado's home, except incidentally.

In closing argument, Hurtado relied solely on the alleged taking of pictures of her house and family.

Stewarts' attorney emphasized the Stewarts had every right to make good faith complaints about noise and code violations. He also argued that there was no specific ongoing pattern of conduct.

III

THE TRIAL COURT'S DECISION

The trial court found insufficient evidence to grant a restraining order against Rochelle.[6]

It then said: "So I really think that this case boils down to really an allegation that Mr. Stewart has engaged in a course of conduct specifically directed at Ms. Hurtado and Mr. Ramirez that would cause them significant distress. I think it's clear to the Court that Ms. Hurtado has suffered distress as a result of the perception of Mr. Stewart's conduct. [¶] The conduct that causes the Court most concern is the . . . language directed at the Hurtado/Ramirez household in terms of being referred to as wetbacks, illegal immigrants, being told they don't belong in that location. That conduct was testified to by a number of witnesses on the stand and that corroborated that, in fact, Mr. Stewart engages in that kind of behavior towards his neighbors. [¶] The other conduct that causes the Court concern is the picture taking. And . . . with regard to that conduct, there was corroborating testimony from neighbors that Mr. Stewart has engaged in taking pictures of other people's homes, taking pictures over fences to other people's backyards when the kids were playing in the backyard, and so it's that conduct that causes the Court concern. Obviously, it causes Ms. Hurtado distress."

The trial court went on to find, by clear and convincing evidence, that these two activities occurred and there was therefore sufficient evidence of racial slurs and a lack of

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[6] The distinction between Mr. and Mrs. Stewart is questionable since most of the evidence of racial slurs was against Mrs. Stewart.

respect for other people's privacy. Accordingly, a restraining order was issued against Mr. Stewart.[7]

IV

STANDARD OF REVIEW

As noted, *ante*, the trial court was required to make any finding of harassment by clear and convincing evidence. (§ 527.6, former subd. (d).) "Appellate review of a determination under this standard is the same as in other cases, i.e., the question whether the plaintiff's evidence is clear and convincing is for the judge or jury, and if the trier of fact's determination is supported by substantial evidence, it will not be disturbed on appeal. [Citations.]" (1 Witkin, Cal. Evidence (5th ed. 2012) Burden of Proof and Presumptions, § 39, pp. 210-211; see also *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2.) We therefore apply a substantial evidence standard of review to the trial court's factual determinations.

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[7] It is interesting to note that the order, as issued, does not restrict Stewart making racial slurs or taking pictures. It merely requires him to stay 20 feet away from Hurtado and her family. There is only an incidental speech restriction here. (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at pp. 191-192.) If, however, Stewart continued making racial slurs in Hurtado's presence, the definition of a course of conduct may be met, and a future injunction from such harassment may be appropriate.

"[T]he express codified purpose of a prohibitory injunction is to prevent future harm to the applicant by ordering the defendant to refrain from doing a particular act. [Citations.] Consequently, injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed. [Citation.] It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future." (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332.)

Once the facts have been determined, there is a separate legal question of whether the facts, as found by the trial court, are *legally* sufficient to constitute civil harassment under section 527.6, and whether the restraining order is constitutional. These determinations are subject to a de novo standard of review. (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 188.)

V

SECTION 527.6

Section 527.6, subdivision (a)(1) provides: "A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section."

"Harassment" is defined in section 527.6, former subdivision (b) as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff."

A course of conduct is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail.

Constitutionally protected activity is not included within the meaning of 'course of conduct.'" (§ 527.6, former subd. (b)(1).)

VI

THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S DETERMINATION THAT STEWART USED OFFENSIVE LANGUAGE AND TOOK PICTURES OF OTHER PEOPLE'S YARDS AND CHILDREN

We first examine Stewart's claim that there is *no* evidence that he used offensive language towards Hurtado.

The contention is factually incorrect. Hurtado included alleged racial slurs in her request for a restraining order and she testified: "It started about ten years ago. We are neighbors. And from the get-go, Ms. Stewart and Mr. Stewart have made it clear that they are racist. They . . . have made multiple racial slurs against my husband and against myself." Although most of the other allegations of bad language were allegations against Rochelle, Hurtado also stated at one point: "[T]hey would—insult my husband and insult my family and call us 'wet backs' or call us . . . illegal immigrants."(RT 7}

This testimony is substantial evidence to support the trial court's conclusion that Stewart made racial slurs. (Evid. Code, § 411.)

With regard to pictures, Ramirez testified that he only saw Stewart taking pictures of his children one time. The trial court cited the testimony of the neighbors that Stewart took pictures of their homes and backyards when children were present. The testimony was sufficient to establish, factually, that picture taking occurred.

VII

THE CONDUCT RELIED ON BY THE TRIAL COURT WAS NOT A "COURSE OF CONDUCT" UNDER SECTION 527.6, FORMER SUBDIVISION (b)(3)

The trial court issued a restraining order based on its finding that Stewart had made racial slurs and taken pictures in the neighborhood. Stewart argues vigorously that this conduct is simply not sufficiently serious to constitute a "course of conduct" under the statute.

First, Stewart cites the examples of a course of conduct evidencing a continuity of purpose given in the statute: following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means. Applying the doctrine of *ejusdem generis*, he argues that the meaning of the term "course of conduct" is restricted to those examples, or similar conduct.[8]

Stewart cites *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160, overruled on other grounds as stated in *Luna v. Hoa Trung Vo*, 2010 U.S. Dist. LEXIS 121543. He also cites *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1979) 25 Cal.3d 317, 331. Both of these cases apply the *ejusdem generis* maxim in deciding those cases.

We agree with Stewart that, applying the *ejusdem generis* maxim, the conduct found here is simply not similar to the examples listed in the statute, and is therefore not

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[8] The doctrine, which is based on Civil Code section 3534, is clearly and succinctly described in *Martin v. Holiday Inns* (1988) 199 Cal.App.3d 1434, 1437-1438.

included in the definition of "course of conduct." (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1045.)

As described, *ante*, the course of conduct definition also requires a series of acts over a period of time. This requirement was not met by the picture taking incident here. Ramirez only testified to one instance of picture taking directed at him and his family. A single incident is not enough. For example, a single incident in which a person used very bad language was found to be outside the statutory definition of harassment in *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 5-6. Evidence of a single incident is clearly insufficient to justify a restraining order.[9]

The issue therefore boils down to the question of whether the conduct of a person who makes a series of racial slurs directed at another person is conduct that, standing alone, can be the basis for issuance of a restraining order to stop harassment. Clearly. such conduct can constitute harassment if it meets the criteria of section 527.6 (b)(1). However, as found, *ante*, the vague evidence of such conduct here is not sufficient to constitute a "course of conduct" under the statutory definition.

VIII

THE TRIAL COURT PROPERLY IGNORED EVIDENCE OF CONSTITUTIONALLY PROTECTED ACTIVITY

The exclusion for constitutionally protected activity in section 527.6, former subdivision (b)(3) respects constitutional rights by preventing constitutionally protected

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[9] Ramirez testified that Stewart took the picture from the public street about 50 feet from the Hurtado/Ramirez home.

activity from being part of a "course of conduct." The definition of "harassment" also excludes a course of conduct which serves a legitimate purpose. (§ 527.6, former subd. (b).)

The definition of harassment includes unlawful violence, or threats of violence, or "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose."[10] (§ 527.6, former subd. (b).)

Under this definition, conduct that has a legitimate purpose is not harassment. As shown by the request for restraining order and the testimony of Hurtado and Ramirez, much of the alleged harassment resulted from Stewart's apparent habit of calling code enforcement and police authorities frequently. This activity is constitutionally protected activity.

As Stewart testified, he was "seeking just to have the neighbors comply with the . . . local ordinances." While understandably annoying, even extreme examples of persons complaining to authorities have been held to be protected activity under the statute. (*Smith v. Silvey* (1983) 149 Cal.App.3d 400, 406-407.)

Since the statute also specifically excludes constitutionally protected activity from the definition of "course of conduct," that activity is not usable against Stewart. Unless proven otherwise, such activity is also for a legitimate purpose, as that term is used in the

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[10] Hurtado argues that the restraining order would be proper if based on credible threats of violence. The problem is that there is no evidence in the record of any such threats, and the trial court made no such finding.

definition of "harassment." Since there was no evidence or claim that Stewart's purpose in this case was illegitimate, it was not harassment and cannot constitute the basis for a restraining order.[11] (*Nebel v. Sulak*, *supra*, 73 Cal.App.4th at p. 1370.)

IX

OTHER CONSIDERATIONS DO NOT SUPPORT

THE GRANTING OF THE RESTRAINING ORDER

A. *Testimony of the Neighbors*

It appears that the trial court was influenced by the number of neighbors who made submissions to the court, and especially those who took time to testify in court about their concerns over Stewart's activities. For example, the single incident that occurred when Stewart took a picture of the front yard of Hurtado/Ramirez home, with children present, was undoubtedly magnified when neighbors testified that Stewart took pictures of their children in their own backyard pool. Even though Stewart was not clearly identified in the testimony, the testimony of Yvette De La Riva that she was afraid of her neighbor was especially concerning. Several other neighbors were upset that alleged code violations were reported, and that police were regularly called.

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[11] However, we can conceive of a situation in which constitutionally protected activity is used solely to harass petitioner, and therefore has no legitimate purpose. A similar distinction is illustrated by *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228. In that case, a person who stood on the sidewalk outside the private home of a company employee while holding a candle was engaged in protected speech conduct not proscribed by section 527.6. (*Id*. at pp. 1239, 1259.) Others, who threatened violent conduct, were within section 527.6, former subdivision (b)(2). (*Id*. at p. 1239.) The nature of constitutionally permissible restraints on speech in this context is well described in *R.D. v. P.M.*, *supra*, 202 Cal.App.4th 181, 191-193.

Although the trial court was obviously concerned about a pattern of conduct shown by the testimony of the neighbors, it did not focus on the evidence presented by Hurtado and Ramirez of conduct directed at them. The role of the neighbors' testimony was to corroborate the testimony of Hurtado and Ramirez. It did so and the trial court believed the testimony of Hurtado and Ramirez.

However, section 527.6, former subdivision (b) defines "harassment" to include a course of conduct *directed at a specific person.* The problem for Hurtado and Ramirez is that they have not shown conduct directed at them that meets the requirements of the statute. The testimony of the neighbors was only corroborative and cannot substitute for evidence that legally harassing conduct was *directed at them.*

B. *Constitutional Privacy Rights*

It is significant to note that there are differences between the constitutional right of privacy, the purpose of section 527.6, and the conduct proscribed by the statute, as applied to the fact situation here.

"There is . . . a fundamental right of privacy. (Cal. Const., art. I, § 1.) Indeed, the Legislature created section 527.6 to '"protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution."' [Citation.]" (*Ensworth v. Mullvain*, *supra*, 224 Cal.App.3d 1105, 1113; see also *Diamond View v. Herz* (1986) 180 Cal.App.3d 612, 619.)

In the case of ambiguity, we must interpret the statute in accordance with its purpose: "Section 527.6 'was enacted "to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution."' [Citation.] Its

purpose is 'to provide expedited injunctive relief to victims of "harassment."' [Citation.] In interpreting section 527.6, we must 'ascertain the intent of the Legislature in order to effectuate the purpose of the law; . . . give the provision . . . a reasonable and commonsense interpretation consistent with that apparent purpose; . . . give significance, insofar as is possible, to every word or part, harmonizing particular clauses by considering them in the context of the whole; . . . take public policy into account; and . . . give great weight to consistent administrative construction.' [Citation.]" (*Kobey v. Morton* (1991) 228 Cal.App.3d 1055, 1059.)

However, there is no ambiguity here and, because of constitutional concerns, the statute is narrower than the constitutional right. "Thus, although the procedures set forth in the harassment statute are expedited, they contain certain important due process safeguards. Most notably, a person charged with harassment is given a full opportunity to present his or her case, with the judge required to receive relevant testimony and to find the existence of harassment by 'clear and convincing' proof of a 'course of conduct' that actually and reasonably caused substantial emotional distress, had 'no legitimate purpose,' and was not a 'constitutionally protected activity.'" (*Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730-731.)

As discussed *ante*, the definition of "course of conduct" is restricted by the examples of serious conduct in section 527.6, former subdivision (b)(3). That subdivision also does not include constitutionally protected activity in the definition of "course of conduct," and former subdivision (b), provides that "harassment" includes a course of conduct which serves no legitimate purpose.

C. *Invasion of Privacy*

Like the trial court, we are concerned with the significant invasions of privacy by Stewart's activities in the neighborhood, including routine disruptions of neighbor's parties by repeatedly calling police, reporting of a significant number of alleged code violations, and taking pictures of neighborhood yards and children.

Perhaps the words of *Schild v. Rubin* (1991) 232 Cal.App.3d 755 are applicable: "A reasonable person must realize that complete emotional tranquility is seldom attainable, and some degree of transitory emotional distress is the natural consequence of living among other people in an urban or suburban environment. [Citation.] A reasonable person must expect to suffer and submit to some inconveniences and annoyances from the reasonable use of property by neighbors, particularly in the sometimes close living of a suburban residential neighborhood. The Schilds' basketball playing occurred in a time, place and manner which constituted a reasonable use of their property. Accordingly, the Schilds' basketball playing was not so outrageous, extreme, intense or enduring as to come within the scope of injunctive relief for willful harassment pursuant to section 527.6." (*Id*. at p. 763.)

X

CONCLUSION

We must conclude that Stewart's activities do not fall within the statutory definitions in section 527.6. Accordingly, the trial court erred in issuing a restraining order against Stewart.

XI

DISPOSITION

The order filed December 14, 2011, is reversed. In the interests of justice, each party shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P. J.

KING
J.